

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1920.

No. 3443 688

BERTIE L. LAWSON, APPELLANT,

vs.

**JAMES H. BAILEY, GEORGE D. CARROLL, FREDERICK D.
GIESLER, ET AL.**

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.**

FILED AUGUST 16, 1920.

PRINTED SEPTEMBER 15, 1920.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1920.

No. 3443.

BERTIE L. LAWSON, APPELLANT,

vs.

JAMES H. BAILEY, GEORGE D. CARROLL, FREDERICK G. GIESLER, JOHN E. MURPHY, RICHARD E. PAIRO, AND THEODORE N. GILL, JR., TRUSTEES, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 3443.

BERTIE L. LAWSON, Appellant,

vs.

JAMES H. BAILEY et al.

a Supreme Court of the District of Columbia.

Equity. No. 36034.

BERTIE L. LAWSON, Plaintiff,

vs.

JAMES H. BAILEY, GEORGE D. CARROLL, FREDERICK D. GIESLER,
John E. Murphy, Richard E. Pairo, and Theodore N. Gill, Jr.,
Trustees, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed July 5, 1918.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

Equity. No. 36034.

BERTIE L. LAWSON, Plaintiff,

vs.

JAMES H. BAILEY, GEORGE D. CARROLL, FREDERICK D. GIESLER,
John E. Murphy, Richard E. Pairo, and Theodore N. Gill, Jr.,
Trustees, Defendants.

To the Justice of the Supreme Court of the District of Columbia holding an Equity Court for said District:

The bill of complaint of the above named plaintiff respectfully states as follows:

1. That plaintiff, Bertie L. Lawson, is a citizen of the United States, and a resident of the District of Columbia, and she brings this suit in her own right, for the relief as hereinafter set forth.

2. The defendants are all citizens of the United States, and all residents of the District of Columbia, and all are sued in their own right, excepting the defendants Richard E. Pairo and Theodore N. Gill, Jr., who are sued as Trustees under the certain deed of trust hereinafter referred to, said Richard E. Pairo being also sued in his own right; and the defendant James H. Bailey as plaintiff is informed and believes is now in France, in the service of the United States, and was in the service of the United States, and in France, at the time of the foreclosure proceedings hereinafter referred to.

3. That on to wit: the 10th day of September, A. D. 1917
2 the plaintiff, Bertie L. Lawson was the owner in fee simple of lot numbered one hundred and thirty-four (134), in Square numbered three hundred and sixty-five in the City of Washington, District of Columbia, entirely unincumbered, and of the value of about six thousand dollars (\$6,000.00). That shortly before said date, the defendant George D. Carroll, being then in the real estate business in the District of Columbia, and possessing the confidence of the plaintiff, undertook to persuade her to exchange her said above described lands and premises for other property, to wit: lot numbered two hundred and thirty-two (232), in John A. Wyncoop's subdivision of lots in square numbered eight hundred and sixty (860), as per plat recorded in Book 31 page 91, in the Office of the Surveyor of the District of Columbia, and said defendant Carroll represented to plaintiff that there was but one trust upon said property in and for the sum of eleven thousand dollars, and that said property was otherwise free and clear of all encumbrances. And plaintiff did believe these assurances and relied entirely and solely upon the judgment and statements in respect thereof, of the said defendant George D. Carroll. And plaintiff upon such representations agreed to make said exchange of properties, she to receive \$800.00 in cash, together with said above described property, and her property above and hereinbefore described to be valued at the sum of five thousand dollars over and above said cash payment of \$800.00. And thereupon said deal was consummated and plaintiff conveyed her said property at the suggestion of said defendant George D. Carroll, to John E. Murphy, whom said George D. Carroll represented to her was the purchaser thereof; and said deed was duly recorded in the Land
3 Records of the District of Columbia, in Liber 4014 folio 133, et seq. And thereupon plaintiff received said \$800.00 in cash, and a deed for said other property, said deed being duly recorded in Liber 4014 folio 132, of the Land Records of the District of Columbia.

4. That plaintiff did not begin to mistrust the statement of her said agent, George D. Carroll, until she received her first statement from the agent in charge of said property, which she had received in exchange, when for the first time she learned that said property had not only one trust, as represented by said Carroll, but two trusts, the second of said trusts being to secure an indebtedness to one R. L. Humphrey of Four thousand eight hundred and thirty dollars, under the terms of which trust, J. C. Weeden and Company are permitted to have the sole and exclusive right to collect the rents, issues and profits arising from said property during the existence of the

said trust and until the debt secured thereby is fully paid to make the monthly payments due the Building Association, interest on said loan, and to pay over the balance to the then owner of the Equity, said Equity having been under the terms of said exchange now placed of record in the plaintiff. And plaintiff says that said property is by said two encumbrances fully covered of its value, and by and because of said misrepresentations by said defendant Carroll, plaintiff obtained and receives nothing for her said property worth \$6,000.00, excepting said sum of \$800.00, which said sum was by said Carroll raised by the \$2,000.00 encumbrances which he placed or caused to be placed on her own property.

5. That immediately upon the receipt of said deed to him from plaintiff, the said John E. Murphy, acting for said Carroll, and himself having no interest in said property, encumbered said property of plaintiff by a deed of trust, to secure Wm. C. Murphy, the sum of two thousand dollars, and the said defendants Richard E. Pairo and Theodore N. Gill, Jr., Trustees, are named as Trustees in said deed of trust. But that said William C. Murphy had no interest whatsoever in said note, and was simply acting as apparent holder or owner for the defendant Richard E. Pairo, who in fact was the owner thereof, as plaintiff believes and is informed, and who also is, as hereinbefore stated, was the trustees under said deed of trust to secure said note, of which he was holder. That said deed of trust is recorded in Liber No. 4014 folio 134 of the Land Records of the District of Columbia. And that thereupon and at the same time to wit: September 10, 1918, the said John E. Murphy conveyed said property to James H. Bailey, named herein as defendant. That said deed in fee is duly recorded in Liber 4011 folio 433 of the Land Records of the District of Columbia. That said facts have been learned by plaintiff by an investigation which she caused to be made, after she had discovered the falsity of the statements made to her by said defendant Carroll, that said property was encumbered with but one trust.

6. And plaintiff is further informed and believes and so believing avers that the said James H. Bailey never had any interest whatsoever in said lands and premises, although he is the owner in fee thereof of record. That he the said James H. Bailey has been for a long time in numerous transactions a mere straw man acting in the interest of the said George D. Carroll, and merely holds said property subject to the direction and control of said defendant Carroll.

7. That on to wit: the — day of April 1918, the principal of said indebtedness of \$2,000 not yet having matured, and the semi-annual interest being only a few days overdue, the defendants Pairo and Gill, without making any demand upon plaintiff, Bailey, or said defendant John E. Murphy, or the true owner of said land, or upon the true holder of the title thereto, or upon the maker of said note, and having sufficient knowledge to be put upon notice that said transaction was not bona fide, ordered a public sale or foreclosure of said deed of trust, and did cause the same to be sold at public auction, at and for the price of to wit \$2,250, to the defendant Giesler. That said Giesler as plaintiff is informed and believes had notice and knowledge of the interest of said defendant

Carroll in said lands and premises, sufficient to be placed on notice as to the nature of said transactions of said Carroll. That said price which said property was sold for is so inadequate as to shock the conscience of the Court, and should be set aside and held for naught. That so much of said \$2,000 as may have been borrowed upon said property by the said John E. Murphy, was not paid to and did not become the property of said John E. Murphy, but the same went under the control of said Carroll, and it was out of said \$2,000 that said \$800 was paid to the plaintiff. That the said defendant Bailey was at the time of said foreclosure proceedings hereinbefore referred to in France, in the Military service of the United States, and being the record owner, such sale was invalid, as being against the interest of a person in the military service of the United States and against the terms of the Statute in such case made and provided. Plaintiff asks for a full discovery under oath from all the defendants in respect of said transaction.

8. Plaintiff further says that the whole matters herein set
6 forth were but one scheme on the part of said Carroll to deprive her of her home, and fraudulently give her in lieu thereof, the sum of \$800.00, in cash, and a worthless equity on said other hereinbefore described lands and premises, and further to burden her with two trusts thereupon, largely in excess of its value, all in the wrongful enrichment of himself, her trusted agent;

Wherefore the premises considered plaintiff prays:

1. That writs of subpoena issue from this court commanding the defendants James H. Bailey, George D. Carroll, John E. Murphy, Richard E. Pairo, Theodore N. Gill, Jr., and Frederick C. Giesler, to appear and answer the exigencies of this bill of complaint.

2. That the said Frederick C. Giesler be temporarily enjoined pendente lite, and permanently, from conveying title to the said property, or from beginning or continuing any landlord and tenant proceedings to obtain possession thereof from plaintiff, either by himself or any one acting for him, and that plaintiff be granted a rule to show cause restraining any such proceeding; and that the said deed to said Frederick C. Giesler be set aside and for naught held; and that said deed from said plaintiff to said John E. Murphy, and said deed from John E. Murphy to said James H. Bailey be set aside and for naught held; and that an accounting be had between plaintiff and said Richard E. Pairo holder of said note, to the end that whatsoever amount as may lawfully be due thereupon may be paid, and no more.

3. And for such other and further relief as the nature of the case may require and to Equity seem proper and just.

BERTIE L. LAWSON,
Plaintiff.

JAMES A. COBB,
RICHARDSON & SHREVE,
Attorneys for Plaintiff.

7 DISTRICT OF COLUMBIA, *To wit:*

I Bertie L. Lawson, on oath say I have read the foregoing bill by me subscribed and know the contents thereof, and that I verily believe the facts therein stated to be true.

BERTIE L. LAWSON.

Subscribed and sworn to before me this 5th day of July, 1918.

AUGUSTUS W. GRAY,

[SEAL.]

Notary Public, D. C.

Answer of Frederick D. Giesler.

Filed July 19, 1918.

* * * * *

Answering said bill and rule to show cause in the above entitled cause in so far as he is advised it is necessary to answer the defendant Frederick D. Giesler says:

First. He admits the facts contained in the first paragraph of said bill.

Second. He has no knowledge of the facts set out in said second paragraph of said bill except that he is a citizen of the United States and a resident of the District of Columbia.

Third. That he has no knowledge of the facts set out in said third paragraph of said bill, nor has he any acquaintance with the parties thereto, nor had he any knowledge of the title to this property until he purchased same as hereinafter set forth.

Fourth. Respondent has no knowledge of the facts set out in the fourth paragraph of said bill.

8 Fifth. Respondent has no knowledge of the facts set out in the fifth paragraph of said bill.

Sixth. Respondent has no knowledge of the facts set out in the sixth paragraph of said bill.

Seventh. Respondent admits that said property was advertised for sale by the trustees and that just before the sale was about to take place he was informed by the auctioneer that a sale was to take place and the property sold, but up to the time of the sale he had no knowledge of said property or the title thereto; that he arrived at said auction after the bidding had started and that he bid on said property the sum of \$2,295.00 and that he had no notice of any interest of defendant Carroll in said property; that his bid was a bona fide bid and was in his opinion a fair price for said property. That he had no knowledge of any interest of anybody of any fraud in any way connected with said sale, but that said sale was an ordinary sale, carried on by the trustees; that after he bid on said property he made a deposit required and that said property was deeded to him and that he paid on said property the sum of \$2,295.00 cash.

Respondent further says that he being the bona fide holder of said property has collected one month's rent thereon from plaintiff, and that two months' rent are now due and that the party, the plain-

tiff herein, has acknowledged the relation of landlord and tenant with respondent, and respondent being the bona fide holder of said property is entitled to receive the rents and that no injunction or preliminary order or otherwise should issue against him to recover same in a proper action in the Municipal Court or any other court that has jurisdiction.

9 Having fully answered your respondent prays that the bill is dismissed and the rule on sale discharged.

FRED D. GIESLER.

MARTIN J. McNAMARA,
D. W. BAKER,
Attorneys for Respondent.

DISTRICT OF COLUMBIA, ss:

Frederick D. Giesler being first duly sworn deposes and says that he has read over the above answer by him subscribed and knows the contents thereof; that the matters and things therein contained of his own personal knowledge are true, and those things stated on information and belief, he believes to be true.

FRED D. GIESLER.

Subscribed and sworn to before me this 19th day of July, 1918.

J. R. YOUNG, *Clk*,
By F. E. CUNNINGHAM,
Ass't Clk.

Separate Answer of Richard E. Pairo.

Filed July 30, 1918.

* * * * *

Now comes the Defendant, Richard E. Pairo, and answering in his own right and as Trustee, says:

1 and 2. This Defendant says that he presumes the allegations of facts stated in said paragraphs are true except on information and belief, he denies that James H. Bailey, a Defendant in this Cause, is the same James H. Bailey now alleged to be in France in the service of the United States.

10 3. This Defendant admits that the records show that Bertie L. Lawson was on or about the 10th day of September, 1917, the owner in fee of Lot 134 in Square 365 in the City of Washington, District of Columbia, but denies that said real estate was worth the sum of \$6,000.00 or worth one-half of that sum; this Defendant believes that said real estate was at the most worth not over the sum of \$2,500.00. As to all of the other allegations in said paragraph contained, this Defendant has no knowledge and has not had any knowledge of any of the said allegations except what he has learned from reading the Bill of Complaint, and further denies that he is interested in their truth or falsity.

4. This Defendant has not had and has no knowledge except

from reading this Bill of Complaint of any of the allegations contained in Paragraph 4 and is not concerned in the same.

5. This Defendant says that the said George D. Carroll applied to him to make a loan to one John E. Murphy of \$2,000 on said real estate, that this Defendant had trust funds in his hands for making loans, did appraise the said real estate at \$2,500.00 and did agree to loan \$2,000.00 thereon provided a good record title was found to exist to said real estate. This Defendant says that he deposited his money for the loan with The Realty Appraisal and Title Company, with instructions to prepare a Deed of Trust from the said Murphy to himself and Theodore N. Gill, Jr., as Trustees, with one William C. Murphy the payee of the note which was to be for three years with interest at 6% payable semi-annually; said Defendant says that

11 William C. Murphy was at that time a clerk in his office and it has been his custom and has been the custom with all real estate firms and banks in the City to use the clerks in their office as a matter of convenience and it is in fact a universal custom. Said Murphy endorsed said note over without recourse to him; said loan being intended for funds of a client, which funds were in his hand to invest for her account. This Defendant says that full value was paid for said loan less a reasonable commission, and said loan was made by this Defendant in the usual business way and transferred to an innocent purchaser for value and that neither this Defendant nor the holder of the note had any knowledge of any misrepresentation, fraud or covin that the said George D. Carroll might have practiced upon the said Plaintiff, if in fact, he did practice any such fraud, misrepresentation or covin as alleged in said Bill of Complaint and being ignorant of the same, this Defendant says that he has no further concern in the matter.

6. This Defendant is not concerned in any of the allegations in Paragraph 6 contained as they are subsequent and inferior to the Deed of Trust mentioned in said Bill of Complaint.

7. This Defendant says that the interest on the said debt of \$2,000.00 secured by the said Deed of Trust being long overdue, this Defendant made diligent effort to locate the Defendant parties who may have had some interest in forestalling a foreclosure. Defendant says that he notified John E. Murphy the maker of the note twice at least, and Defendant says that he examined the records and found that James H. Bailey was the owner of the property and that

12 there was a Second Deed of Trust against it in favor of James H. Thomas and he took pains to notify him of default and threatened sale, and at this time Defendant learned that apparently James H. Bailey was a straw man and held title for George D. Carroll or at any rate Carroll represented said Bailey, and he notified said Carroll of his intention to foreclose and Carroll told him to sell. Defendant says that he gave repeated notices to all parties interested of his intention to sell said real estate at public auction for default in the payment of the debt. Defendant further says that said sale was duly advertised, notices were posted upon the premises, the tenant of the Plaintiff was in possession and knew of the sale, that the sale took place in the regular way, that it was a nice day, that there were three bidders and that the property brought

\$2,295.00, which was a fair price and that same was bid by Fred D. Giesler, who paid or caused to be paid cash for the same, and this Defendant, either as trustee or as custodian or trustee for the holder of the note has received full satisfaction and has no further interest in this suit except to say that the said Fred D. Giesler ought to have the fruits of his purchase. This Defendant further denies that the said James H. Bailey is in military service and that said sale was invalid and says that if said James H. Bailey was in military service as stated it is a question which he should raise and not the Plaintiff.

8. Defendant has no knowledge of any of the facts or conclusion of law set forth in said paragraph.

Wherefore, this Defendant prays to be dismissed with his costs.

RICHARD E. PAIRO.

PAUL L. WRIGHT,

For Def't R. E. Pairo.

13 DISTRICT OF COLUMBIA, *To wit:*

Richard E. Pairo, being first duly sworn according to law deposes and says that he has read the foregoing Answer by him subscribed, and that the allegations of fact stated therein are true as he verily believes.

RICHARD E. PAIRO.

Sworn to before me and subscribed in my presence by the said Richard E. Pairo, on this the 29th day of July A. D. 1918.

S. A. TERRY,
Notary Public, D. C.

[SEAL.]

Separate Answer of Theodore N. Gill, Jr., Trustee.

Filed July 30, 1918.

* * * * *

Now comes the Defendant, Theodore N. Gill, Jr., Trustee, and says in answer to the Bill of Complaint of the Plaintiff filed herein that, except what he has learned from reading said Bill of Complaint, he has no knowledge or information of any of the facts stated therein, except as follows, to wit:

This Defendant says that he was one of the Trustees named in the Deed of Trust set forth in Paragraph 5 of said Bill of Complaint becoming such Trustee for convenience; that at the request of the holder of the note secured by the said Deed of Trust and because of default in the payment of the interest on said note and acting in accordance with the powers, duties and obligations imposed upon him by virtue of the said Deed of Trust, he the said Defendant as Trustee, did authorize the advertisement and sale of the real estate secured

14 by said Deed of Trust, to wit: Lot 134 in Square 365, in the City of Washington, District of Columbia on the 17th day of April, 1918, after previous advertisement and because of default as aforesaid and at the request of the holder of the note, did proceed on said day to offer said premises for sale at public auction

to satisfy the holder of the note for such default. Defendant says that on the date of sale and at the time and place as advertised and as Trustee as aforesaid, the sale was opened at which there were three bidders, the day was pleasant and after several bids were made said Defendant as one of the Trustees, through the auctioneer sold the said real estate to the said Defendant, Fred D. Giesler, for the sum of \$2,295.00, which price was a fair price and adequate price for the said real estate and its improvements. This Defendant says that thereafter the said Fred D. Giesler paid or caused to be paid the consideration therefor, and this Defendant signed and acknowledged a Deed as Trustee conveying to said Fred D. Giesler the aforesaid described property, which Deed was executed and delivered by this Defendant pursuant to the powers of sale contained in the said Deed of Trust mentioned in said Paragraph 5 of said Bill of Complaint. Defendant reaffirms that the sale was in all respects bona fide, brought a fair price and sold under advantageous circumstances. The Defendant denies on information and belief that the James H. Bailey who was the owner of the said real estate at the time of sale and who is mentioned in said Bill of Complaint as being in the military service and being stationed in France is the same James H. Bailey who was the owner of said real estate. Further answering said Defendant knows of no reason why said sale was not lawful and right.

Wherefore, this Defendant prays to be dismissed with his
15 costs.

THEO. N. GILL, JR.

PAUL L. WRIGHT,
For Def't Theo. N. Gill, Jr., Trustee.

DISTRICT OF COLUMBIA, *To wit:*

Theodore N. Gill, Jr., being first duly sworn according to law deposes and says that he has read the foregoing Answer by him subscribed, and that the allegations of fact stated therein are true as he verily believes.

THEO. N. GILL, JR.

Sworn to before me and subscribed in my presence by the said Theodore N. Gill, Jr., on this the 29th day of July A. D. 1918.

[SEAL.]

S. A. TERRY,
Notary Public, D. C.

Decree.

Filed April 12, 1920.

* * * * *

This cause came on to be heard upon the bill of complaint, answer to said bill, and the opening statement of counsel for the plaintiff, and having been argued by counsel and considered by the Court, it is by the Court this 12th day of April, 1920,

Adjudged, ordered and decreed, That the injunction and restraining order heretofore granted against the defendant Giesler be, and the same are, hereby dissolved, but jurisdiction is retained to refer this cause, and the same is hereby referred, to the Auditor to state the damages, if any, the defendant Giesler has suffered by reason of the wrongful and inequitable suing out of said injunction and
16 restraining order.

It is further adjudged, ordered and decreed, That each and all of the prayers of the Bill of Complaint be, and the same are, hereby denied, and the said Bill dismissed with costs.

JENNINGS BAILEY,
Justice.

From the foregoing decree the plaintiff in open Court prays an appeal to the Court of Appeals of the District of Columbia and said appeal is hereby allowed, and the bond, to operate as a supersedeas, is hereby fixed at the sum of two thousand (\$2,000) dollars.

By the Court:

JENNINGS BAILEY,
Justice.

Memoranda.

April 23, 1920.—Bond on appeal (supersedeas) approved and filed.

May 17, 1920.—Statement of Evidence submitted.

May 20, 1920.—Time for presenting, filing and settling Statement of Evidence extended to June 25, 1920.

June 12, 1920.—Time to submit Statement of Evidence extended to July 15, 1920.

17 June 25, 1920.—Bill of Exceptions submitted.

June 29, 1920.—Statement of Evidence and Bill of Exceptions signed.

July 1, 1920.—Statement of Evidence and Bill of Exceptions filed.

Assignment of Errors.

Filed July 20, 1920.

* * * * *

And now comes the plaintiff, by her counsel, and files the following assignment of errors in the above entitled cause:

1. The Court below erred in dismissing the bill upon the statement of facts of counsel, it being insisted that said statement of facts did constitute ground for relief in a Court of Equity.

2. Because under the Court's ruling the mere question of value should not have been the sole and controlling consideration in the mind of the Court, but the fact that plaintiff had been misled by fraud should have gone along with the question of value and should have been the moving consideration for the Court's action.

3. Because while disparity of value in itself may not have been sufficient in the ordinary case for equitable relief, and in this case standing alone may not have been sufficient to have "shocked the conscience" of the Court, yet the fact that the sale took place while plaintiff's mind was under the controlling influence of a fraud perpetrated upon her, should have been sufficient to have "quickened the conscience" of the Court to grant the relief as prayed.

4. Because a Court of Equity should not permit a purchaser at a foreclosure sale to retain his bargain, the value of the property being about \$4,000.00, and the purchase price \$2,295, under the circumstances where the plaintiff failed to protect her rights at the sale her mind being under the controlling influence of a fraud perpetrated upon her in respect of her said property, even tho" such fraud was not perpetrated by the party secured or by the purchaser at the sale, plaintiff offering by her bill to save all parties harmless.

JAMES A. COBB,
RICHARDSON & SHREVE,
Attorneys for Plaintiff.

Designation of Record.

Filed July 20, 1920.

* * * * *

To the Clerk of the Court Supreme Court, D. C.

DEAR SIR:

You are hereby requested to make up the record for appeal in the above entitled cause, to consist of the following records:

1. The original bill filed in this case.
2. All the answers filed.
3. The decree of the Court.
4. The assignment of errors.

The record as to the filing of the bond, approval thereof, and extensions.

19 The date of the approval of the finding of facts or bill of exceptions.

This designation.

JAMES A. COBB,
RICHARDSON & SHREVE,
Attorneys for Plaintiff.

20 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 19, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made

part of this transcript, in cause No. 36034 in Equity, wherein Bertie L. Lawson is Plaintiff and James H. Bailey et al., are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 29th day of July, 1920.

[Seal Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

L. G.

Endorsed on cover: District of Columbia Supreme Court. No. 3443. Bertie L. Lawson, appellant, vs. James H. Bailey et al. Court of Appeals, District of Columbia. Filed Aug. 16, 1920. Henry W. Hodges, clerk.

ADDITION TO RECORD.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1920.

No. 3443.

BERTIE L. LAWSON, APPELLANT,

vs.

JAMES H. BAILEY, GEORGE D. CARROLL, FREDERICK D.
GIESLER, ET AL.

FILED SEPTEMBER 17, 1920.

In the Supreme Court of the District of Columbia, Holding an
Equity Court for said District.

Equity. No. 36034.

BERTIE L. LAWSON, Plaintiff,

v.

JAMES H. BAILEY et al., Defendants.

Statement of the Evidence.

This cause coming on for hearing April 12, 1920, counsel for plaintiff as and for an opening statement of the facts and evidence upon which it was expected on behalf of the plaintiff to obtain the relief as prayed by the bill, stated as follows:

The plaintiff was the owner of the lands and premises described in the bill in this case, and the defendant George D. Carroll came to her and told her that he would exchange her property for an apartment house described in the bill, and in the exchange contract her property was to have an exchange value of \$6,000.00, and he told her that the apartment house which he represented had on it

only one trust of about \$11,000.00. He also stated that he would temporarily convey the said apartment house to her, subject to the \$11,000.00 trust, and would shortly thereafter convey the said apartment house for another unencumbered piece of property, and in that way she would come out whole. Acting under that persuasion, and believing the facts to be true, as stated by Carroll, she conveyed her property under Mr. Carroll's directions to the defendant John E. Murphy, a straw man for Carroll. That Murphy thereupon at once encumbered the property with a \$2,000.00 trust, said trust being the one to secure Mr. Pairo, also a defendant, \$2,000.00. Thereupon the apartment house was conveyed to the plaintiff. That no question is made as to the good faith of Mr. Pairo, or as to his loan, or that the same was not made in good faith, and was fair, reasonable, and for value. That thereafter the Pairo trust for \$2,000.00 placed upon her property by said Murphy became due, and it was not paid, and there was a foreclosure under the trust, ordered and had by Mr. Pairo. At this foreclosure sale this property brought \$2,295.00. After this foreclosure sale, or possibly a little before, plaintiff had sought counsel to advise her as to the entire transaction, and such counsel had delayed the matter, and continued it along, and then she had to get other counsel, and that they did the same way, and finally the matter was by her placed in the hands of present counsel, and upon investigation, she for the first time learned that instead of the one trust for \$11,000.00 on the property given in exchange for her property, there were two trusts, and that the said apartment was not, being subject to said two trusts, worth the amount of said two trusts. So that as a matter of fact the plaintiff received nothing for her property, and this foreclosure sale of her property, under the Pairo trust was conducted while she was still in a state of confidence about Mr. Carroll. She felt that he would make good. She felt that the sale or exchange to her of the apartment house was *bona fide*, honest, with only one deed of trust upon the apartment, and that she had not been defrauded in any way by Carroll. These facts led her to stand by, and in no way to investigate or protect her rights; and it was only after said foreclosure sale had been consummated that the investigation which she had caused to be made finally culminated in advising her mind that a fraud had been perpetrated upon her by Carroll, and that she had thereby lost her property, and received nothing in the transaction. Now the defendant, Mr. Frederick D. Giesler, who bought this property at the foreclosure sale, since the filing of the bill in this case, has obtained a quitclaim deed to this property from the defendant James H. Bailey. He obtained his deed from the trustees under the foreclosure proceedings, and after this suit had been filed, he obtained a quitclaim deed from the defendant James H. Bailey, who, as is alleged, is the ultimate man acting for said Carroll. Mr. Carroll had said Murphy stand as a straw man, and immediately plaintiff's property was conveyed to Murphy, then Carroll had Murphy convey the property to Bailey, also a straw man for Carroll, and the legal title of plaintiff's property thereupon stood in said Bailey of record; and after this suit, with the allegations as appearing by the bill, Giesler got deed in fee quit-

claiming to him, from Bailey, notwithstanding, and in aid of his deed from the said trustees under the foreclosure sale.

That at the time of the foreclosure sale the property of plaintiff was worth \$3,700 or possibly \$4,000.00, and at the foreclosure sale it only brought \$2,295.00.

The money paid by Mr. Pairo has been tendered by the statements in the bill; but not actually tendered in cash.

It is not claimed that the trustees under Mr. Pairo's deed of trust, or that Mr. Giesler had any knowledge at the time of the foreclosure sale of the fraud practiced by Carroll, and Murphy and Bailey, on the plaintiff. The plaintiff's property however was sold under the Pairo trust, which had been placed upon her property by Carroll, or those acting for him, under and in fraud of her rights.

The Court: I do not think the Court could have any power under the circumstances as stated to set aside this sale on the difference in price. In the absence of any proof other than as stated, the bill should be dismissed.

Thereupon plaintiff by her counsel took and prayed an exception to the ruling of the Court, which exception was allowed; and also prayed in open court an appeal to the Court of Appeals, which said appeal was granted.

And counsel for the plaintiff now prays the Court to sign and seal this her bill of exceptions, which is accordingly done now for then, this the 29th day of June, A. D. 1920, and the same ordered of record as of the time of the noting thereof.

By the Court.

JENNINGS BAILEY,
Justice.

O. K.

HENRY I. QUINN,
Atty. for Defendant Giesler.

[Endorsed:] No. 3443. Bertie L. Lawson, Appellant, vs. James H. Bailey et al. Statement of Evidence. Court of Appeals, District of Columbia. Filed Sep. 17, 1920. Henry W. Hodges, Clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

OCT 13 1920

Henry W. Hodges
Plaint

In the Court of Appeals
OF THE DISTRICT OF COLUMBIA.

No. 3443.

BERTIE L. LAWSON, APPELLANT,

vs.

JAMES H. BAILEY ET AL.

BRIEF OF THE APPELLANT.

MASON N. RICHARDSON,
JAMES A. COBB,

Attorneys for Appellant.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

No. 3443.

BERTIE L. LAWSON, APPELLANT,

vs.

JAMES H. BAILEY ET AL.

BRIEF OF THE APPELLANT.

Facts.

At the opening of the hearing counsel for plaintiff made a statement to the court of the facts of the case, as set forth in the bill, and it was upon this statement that the court dismissed the bill (p. 3, addition to record).

If the statement of counsel did not present a case for relief, then no objection is or can be taken to the action of the court.

But it is submitted that the facts as stated did present a case for relief in a court of equity, and that exception taken to the action of the court in dismissing the bill, should be here sustained.

The facts are fully set forth in "addition to the record," and are very brief; but so much thereof as may seem necessary is here set forth as follows:

The plaintiff was the owner of the lands described; and the defendant Carrol, as an agent, urged her to make an exchange for an apartment, and he represented to her that the apartment had only one trust for \$11,000; and

he further stated that the apartment would be conveyed to her only temporarily, and that the ultimate deal would be consummated when he would exchange the apartment for an unencumbered property, already provided for, equal in value to her holding. Acting under this persuasion, plaintiff did convey her property to defendant Murphy, a straw man for Carrol; Murphy immediately encumbered her property for the \$2,000 Pairo trust, and then conveyed her property to Bailey, straw man also for Carrol. Thereupon the apartment house was conveyed to plaintiff, temporarily as she believed.

That Mr. Pairo advanced the \$2,000 loan in good faith is not questioned.

When this trust matured Murphy, the straw man, paid no attention to it; but suffered a foreclosure.

Plaintiff also took no action as she did not know that the apartment had more than one trust, was covered with trust; nor did she yet know that Carrol would not complete his agreement with her. She still trusted him; her fears had not been awakened.

At the foreclosure sale the property was bought in by the defendant, Frederick D. Giesler, for \$2,295. The property as stated is worth \$4,000.

After the foreclosure sale, plaintiff had consulted counsel, for advice in the matter, such counsel had delayed, and continued it along and then she consulted other counsel, with like result; and finally present counsel made an investigation, and she then first learned that the apartment had trusts, in addition to the first trust, more than equaling its entire value. Carrol had left her with the apartment on her hands, and had refused to carry out the other deal. The result was that she had received nothing for her property, which was entirely unencumbered.

The defendant Giesler, purchaser at the foreclosure sale, since the filing of the bill in this case, disclosing to

him the allegations of fraud, sought and procured a voluntary (without consideration) quit claim deed from James H. Bailey, alleged by the bill to be a fraudulent straw man for Carrol.

At the time of the foreclosure sale, the property of plaintiff was worth \$4,000, and at the foreclosure sale it only brought \$2,295.

The plaintiff by her bill offers to save the defendant Giesler harmless; and to account to him for the amount paid, by him, costs and interest.

Assignment of Errors.

1. The court below erred in dismissing the bill upon the statement of facts of counsel, it being insisted that said statement of facts did constitute ground for relief in a court of equity.

2. Because under the court's ruling the mere question of value should not have been the sole and controlling consideration in the mind of the court, but the fact that plaintiff had been misled by fraud should have gone along with the question of value and should have been the moving consideration for the court's action.

3. Because while disparity of value in itself may not have been sufficient in the ordinary case for equitable relief, and in this case standing alone may not have been sufficient to have "shocked the conscience" of the court, yet the fact that the sale took place while plaintiff's mind was under the controlling influence of a fraud perpetrated upon her, should have been sufficient to have "quickenened the conscience" of the court to grant the relief as prayed.

4. Because a court of equity should not permit a purchaser at a foreclosure sale to retain his bargain, the value of the property being about \$4,000, and the purchase price \$2,295, under the circumstances where the

plaintiff failed to protect her rights at the sale her mind being under the controlling influence of a fraud perpetrated upon her in respect of her said property, even though such fraud was not perpetrated by the party secured or by the purchaser at the sale, plaintiff offering by her bill to save all parties harmless.

ARGUMENT.

The court should not have dismissed the bill because, while it is true that the difference in value must be so great as to shock the conscience of the court, when there are no other attending circumstances to awaken conscience, yet where we find such facts as are stated in this case, and where it is the fact that the owner has been misled or surprised, and because of that fact, fails to protect her interest, in that she is put off guard, then the owner will be allowed to redeem, and the difference in value need not be so great in order that the court may be induced to lend its aid.

In *Graffman vs. Burgess*, 117 U. S., ¹⁸⁰~~160~~, the court says:

“The rule has become almost universal that a sale will not be set aside for inadequacy of price unless the inadequacy be so great as to shock the conscience of the court, or *unless there be additional circumstances against its fairness.*”

Also cases cited:

“From the cases here cited we draw the general conclusion that, if the inadequacy of price is so gross as to shock the conscience or in addition to the gross inadequacy the purchaser has been guilty of any unfairness, *or has taken any undue advantage, or if the owner of the property or party interested in it has for any reason been misled or surprised*, then the sale will be regarded as fraudulent and void, or the party interested will be allowed to redeem the property sold. Great inadequacy requires only slight circumstances of unfair-

ness in the conduct of the party benefited by the sale to raise the presumption of fraud."

It also appears that with notice of the allegations of the bill that the defendant Giesler sought and obtained a quit claim deed for the property from Murphy, straw man for Carrol, to whom Bailey, straw man for Carrol, had conveyed the property, after encumbering the same with the \$2,000 Pairo trust; and this was after he had received the trustees' deed at the sale.

In other words, Giesler endeavors and is willing to bolster up his foreclosure sale title by a quit claim deed from Murphy, alleged fraudulent grantee, with notice of the facts as the same are set forth in the bill.

Does he not thereby become infected with the fraud? Does his conduct not seem to proclaim that he is not satisfied with the strength of his "hold"; and he seeks to tighten his grip, by accepting a deed from an alleged fraudulent grantee? Will the court permit such action?

In the case cited, *Graffman vs. Burgess*, the court says:

"If the purchaser has taken any undue advantage, then the sale will be regarded as fraudulent and void."

Was it a fair advantage for the grantee Giesler to seek to strengthen his title, by seeking and obtaining a deed from a person, after notice that the title there held was alleged to be fraudulent?

The plaintiff acted as promptly as she could; she acted immediately she had notice of the fact that she had been defrauded.

For these reasons, it is respectfully submitted that the decree below should be reversed.

Respectfully submitted.

MASON N. RICHARDSON,
JAMES A. COBB,

Attorneys for Appellant.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

NOV 17 1920

Henry W. Hodges.
clerk

In the Court of Appeals
OF THE DISTRICT OF COLUMBIA.

No. 3443.

BERTIE L. LAWSON, APPELLANT,

vs.

JAMES H. BAILEY ET AL.

Brief of the Appellee, Frederick D. Giesler.

HENRY I. QUINN,
Attorney for Appellee.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

No. 3443.

BERTIE L. LAWSON, APPELLANT,

vs.

JAMES H. BAILEY ET AL.

Brief of the Appellee, Frederick D. Giesler.

Facts.

At the conclusion of the opening statement of counsel for plaintiff below, appellant here, the court dismissed the bill of complaint.

The statement of counsel for the plaintiff was substantially as follows:

Plaintiff was the owner of the premises in controversy in this city and that she was persuaded by the defendant, Carroll, to exchange the said premises for an apartment house; that believing Carroll's representations as to the incumbrances on said apartment house, she made the exchange suggested by Carroll; that, at the suggestion of the defendant, Carroll, she conveyed her property to one Murphy, a strawman for Carroll; Murphy immediately placed a deed of trust for \$2,000 on the property and then made a conveyance to one Bailey, who was alleged to be another strawman for Carroll.

That when the trust, placed on the property by Murphy, matured and was not paid, a foreclosure sale was had under said trust and the property in question was bought

in by the defendant, Frederick D. Giesler, for \$2,295; that, at the time of the foreclosure sale, this property was worth \$3,700 or possibly \$4,000. That neither the defendant Pairo, the party secured by the said deed of trust, nor the trustees, nor the defendant, Frederick D. Giesler, **had any knowledge at the time of the foreclosure sale of the fraud alleged to have been perpetrated on the plaintiff**; that the defendant Giesler had obtained his deed to this property from the trustees before the filing of the bill of complaint.

ARGUMENT.

Conceding the truth of the facts which counsel for appellant stated he would prove, the court below could do nothing else under the law than dismiss the bill of complaint; for, by his opening statement, counsel conceded that the defendant Giesler had no knowledge of the fraud alleged to have been perpetrated upon appellant at the time she transferred the property in question under the persuasion of the defendant Carroll. Counsel, by his opening statement, also acquitted the defendant Pairo, the party secured by the deed of trust, and the trustees under said deed of trust, of knowledge of the alleged fraud. So that the court below only had before it the question as to whether the price which the property brought at the foreclosure sale was so grossly inadequate as to deprive appellee of the status of a bona fide purchaser. The property brought at the foreclosure sale the sum of \$2,295, and counsel stated that he expected to prove "that at the time of the foreclosure sale the property of plaintiff was worth \$3,700 or possibly \$4,000.00."

Appellee confidently rests his case on the authority of *Anderson vs. White*, 2 D. C. Appeals, pages 408-421, in which case this court held that where property worth

\$35,000 was sold for \$20,100 at a deed of trust sale, the inadequacy of price was not so great as to shock the conscience or raise a suspicion of unfairness.

In that case the bill of complaint to set aside the sale was filed before any conveyance was made to the purchaser at the trust sale. If in that case this court refused to disturb the equitable rights acquired by the purchaser because of the difference between the conceded value of \$35,000 and the sale price of \$20,100, surely it would not be justified in disturbing the legal title of the appellee to the property which he has acquired in good faith at a foreclosure sale for a price of \$2,295, where the conceded value is at most \$4,000.

Authorities Cited on Appellant's Brief.

The case of *Graffam vs. Burgess*, 117 U. S., page 180, is not in point. That was a case where Graffam, a judgment creditor for about \$46, had execution issued and at the sale of the judgment debtor's property, worth \$10,000 he purchased same for \$73.10. After reviewing the facts in this case, the Supreme Court, by Mr. Justice Bradley, said:

"What is the scheme which has been carried out and is now sought to be sustained in this court? Nothing more nor less than to get and keep possession of the complainant's property, worth \$10,000.00, to satisfy a paltry claim of less than \$200.00; and this has been accomplished by keeping from her all knowledge of the device, lulling her into security until the year for redemption passed by, having her operations watched and her footsteps dogged, and clandestinely seizing possession in her temporary absence. . . . No man with an honest purpose could have done this whatever aggravation he may have had relating to the payment of his claim. There were other methods to which he could and would have resorted. A piano or a mirror would probably have satisfied his whole claim."

And at page 190, the court further said:

“Looking at the whole case, the traces of design on the part of Graffam to mislead the complainant, to lull her into security, and thus to prevent her from redeeming the property, are abundantly manifest, and such design must be assumed as an established fact in the case.”

In that case, Graffam did things which “no man with an honest purpose could have done.” In this case, appellee is acquitted of any fraudulent knowledge or design at the time of sale by the opening statement of counsel for the appellant. But appellant advances the novel proposition that in obtaining a quit-claim deed from defendant Bailey, after this suit had been filed, appellee became “infected with the fraud.” Appellee being an innocent bona fide purchaser at the time the conveyance was made to him under the terms of the foreclosure sale, no subsequent act of his could possibly change his status at the time of the sale.

It is submitted that there is no error in the record, and the decree of the court below should be affirmed.

HENRY I. QUINN,
Attorney for Appellee.

